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AF 300\$ #16 OL
6-3-03

P&G Case 4546RC2D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of :
James W. Cree, et al. : Confirmation No. 1077
Serial No. 09/304,716 : Group Art Unit 3761
Filed May 4, 1999 : Examiner Kidwell, Michele M.

For Absorbent Article Having Fused Layers

BRIEF ON APPEALS

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

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Dear Sir:

Enclosed, pursuant to 37 C.F.R. 1.192(a), is Appellant's brief on Appeal for the above application. The Brief is being forwarded in triplicate.

Please charge the fee of \$320.00 pursuant to 37 C.F.R. 1.17(c) to Deposit Account No. 16-2480 for the filing of the brief in support of an appeal. The Commissioner is also authorized to charge any additional fees which may be required to this account. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

By Bridget D. Ammons
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Attorney or Agent for Applicant(s)
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(513) 634-1873

Date: May 22, 2003

Customer No. 27752

(BriefonAppealTrans.doc)
(Last Revised 4/3/2003)



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James W. Cree, et al : Confirmation No. 1077
Serial No. 09/304,716 : Group Art Unit 3761
Filed May 4, 1999 : Examiner Kidwell, Michelle M
For **ABSORBENT ARTICLE HAVING FUSED LAYERS**

APPELLANTS' BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

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Dear Sir,

This appeal of Claims 6-8 and 10-12, currently pending in the above application, that were finally rejected by the Examiner in an Office Action dated March 3, 2003. A timely Notice of Appeal was submitted by the by Appellants on April 23, 2003. Appellants' brief is submitted in triplicate.

REAL PARTY IN INTEREST

The Appellants who are named in the caption of the Brief have assigned this application to The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

Appellants, Appellants' legal representative, and the assignee are not aware of any appeals or interferences which would be directly affected by or have a bearing on the Board's decision in the pending Appeal.

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STATUS OF CLAIMS

Claims 6-8 and 10-12 are rejected. Claims 6-8 and 10-12 are being appealed. A copy of Claims 6-8 and 10-12 on appeal appears in the attached Appendix A.

STATUS OF AMENDMENTS

Appellants' have not filed an amendment subsequent to the Final rejection of the claims. The Appellants' are appealing from a Final rejection of Claims mailed on March 3, 2003 in which the Examiner considered the response to an Office Action filed on December 19, 2002 unpersuasive.

SUMMARY OF INVENTION

An absorbent article, such as a diaper, sanitary napkin, adult incontinent device, and the like having fused layers is provided. The absorbent articles preferably comprise a liquid permeable top layer, a liquid impermeable back layer, and a liquid absorbent core disposed between the top layer and the back layer. The top layer has a central zone and side zones at both sides of the central zone. The top layer includes an upper layer of a thermoplastic synthetic resinous material and a lower layer of thermoplastic synthetic fibers which is more hydrophilic than the upper layer but less hydrophilic than the core. The upper and lower layers being intermittently bonded together by thermally embossing the side zones and the central zone being thicker than the side zones.

ISSUE

Whether Claims 6-8 and 10-12 are unpatentable under 35 U.S.C. § 102(e) as being anticipated by Freeland, et al. (U.S. Patent No. 5,019,066).

GROUPING OF CLAIMS

Claims 6-8 and 10-12 are within the same patentable grouping and will stand and fall together.

ARGUMENTS

Whether Claims 6-8 and 10-12 are unpatentable under 35 U.S.C. § 102(e) as being anticipated by Freeland, et al. (U.S. Patent No. 5,019,066).

Claims 6-8 and 10-12 stand rejected under 35 USC 102 (e) as being anticipated by Freeland, et al. (U.S. Patent No. 5,019,066).

than side zones referring to Figure 1 shown above. The Examiner contends the central zone of the top layer to be the combination of layers 38 and 64. The Examiner states that combination of layers 38 and 64, do not extend entirely along the end edges of the article. The Examiner concludes from this that each side edge of the top layer that does not include the waistpanel (64) is considered a side zone and the top layer portion that includes the waistpanel is considered as the central zone. Stated another way, the central zone of Freeland, et al. includes two layers 64 and 38, whereas the side zone only includes one layer, 38. Thus, the Examiner concludes that Freeland, et al. teaches a top layer with a central zone being thicker than the side zones.

The Appellants respectfully disagree with the Examiner's contentions that Freeland, et al. discloses a top layer, which includes an upper layer and a lower layer that are intermittently bonded together in the side zones as required in Claims 6 and 12. Given the Examiners interpretation of Freeland, et al., the upper and lower layer, layer 64 and layer 38 respectively, could never be bonded together in the side zones. This is because the upper layer 64 of Freeland, et al. forms no part of the side zones according to the Examiner. According to the Examiners' interpretation, the side zones of Freeland, et al. contain only the lower layer 38. Because Freeland, et al., fails to teach or disclose each and every element of Claims 6 and 12, Freeland, et al. does not anticipate these claims. Claims 7-8 and 10-11, depend directly from independent Claim 6 and are therefore not anticipated by Freeland, et al. for the same reasons as given above with respect to Claim 6.

SUMMARY

In view of all of the above, Appellants respectfully submit that Claims 6-8 and 10-12 are not anticipated by Freeland, et al. (U.S. Patent No. 5,019,066). Accordingly, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the Examiner's rejection, and remand with directions to allow all of the claims of the present application.

Respectfully submitted,

By Bridget D. Ammons

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Date: May 22, 2003

Cincinnati, OH

APPENDIX A

6. A sanitary napkin comprising:
 - a liquid permeable top layer;
 - a liquid impermeable back layer;
 - a liquid absorbent core disposed between said top layer and said back layer;
 - said top layer having a central zone and side zones at both sides of said central zone, said top layer including an upper layer of a thermoplastic synthetic resinous material and a lower layer of thermoplastic synthetic fibers which is more hydrophilic than said upper layer but less hydrophilic than said core;
 - said upper and lower layers being intermittently bonded together by thermally embossing said side zones; and
 - said central zone being thicker than said side zones.
7. A sanitary napkin according to Claim 6 wherein said lower layer is coextensive with substantially an entire surface of said upper layer.
8. A sanitary napkin according to Claim 6 wherein portions of said top layer and said back layer extending outward beyond a peripheral edge of said core are bonded together by a seal line.
10. A sanitary napkin according to Claim 6 wherein said thermoplastic synthetic resinous material is a fibrous nonwoven fabric.
11. A sanitary napkin according to Claim 6 wherein said thermoplastic synthetic resinous material is a perforated film.
12. A sanitary napkin comprising:
 - a liquid permeable top layer;
 - a liquid impermeable back layer;
 - a liquid absorbent core disposed between said top layer and said back layer;
 - said top layer having a central zone and side zones at both sides of said central zone, said top layer including an upper layer of a thermoplastic synthetic resinous material and a lower layer of thermoplastic synthetic fibers;
 - said upper and lower layers being intermittently bonded together by thermally embossing said side zones; and
 - said central zone being thicker than said side zones.